BEFORE THE
PUBLIC SERVICE COMMISSION
OF WEST VIRGINIA

CASE NO. 02-0809-T-P

VERIZON WEST VIRGINIA, INC.
In the Matter of the Inquiry into
Verizon West Virginia, Inc.'s
Compliance with the Conditions
Set Forth in 47 U.S.C. § 271(c)

DECLARATION OF

Robert J. Kirchberger
and
E. Christopher Nurse

ON BEHALF OF

AT&T CORP.

CHECKLIST DECLARATION

PUBLIC VERSION

OCTOBER 28, 2002

W004

1. My name is E. Christopher Nurse. I am a District Manager of Law & Government Affairs for AT&T. My business address is 3033 Chain Bridge Road, Oakton, Virginia 22185. I received a B.A. in Economics from the University of Massachusetts at Amherst. In 1996, I received a Masters in Business Administration from Southern New Hampshire University. I have over 21 years experience in the telecommunications industry. I was promoted to my current position in September 1999, and previously was Manager of Government Affairs, and Manager of Regulatory and External Affairs for AT&T Local Services.

2. Prior to joining AT&T, I was employed in the same capacity by Teleport Communications Group Inc. ("TCG") beginning in February 1997.[1] Prior to my employment with TCG, I was a Telecommunications Analyst with the New Hampshire Public Utilities Commission from 1991 to February 1997, and was entrusted with a broad range of responsibilities. Assigned to the Engineering Department, I was the lead analyst on over 100 dockets, and a contributing analyst to nearly all telecommunications dockets before that Commission. Specifically, I routinely reviewed capital budget filings, service quality reports, service restoration procedures, and operations. This included conducting Staff investigations in response to consumer and competitor complaints, primarily from competitive pay phone providers and Internet Service Providers. As Staff Advocate, I participated in reviewing a host of new service introductions, tariff filings, cost studies, and traditional rate cases concerning Independent Telephone Companies.

3. In my current position I have participated extensively in proceedings, both formal and informal, pertaining to the development and testing of Verizon's OSS, in New

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[1] Effective July 24, 1998, Teleport Communications Group and its subsidiaries became wholly owned subsidiaries of AT&T Corp.

Jersey, Pennsylvania, Virginia, Maryland, and West Virginia, including the daily monitoring of the KPMG tests and Reports of Verizon's OSS in New Jersey, Pennsylvania and Virginia.

4. I am extensively involved in the development and implementation of performance metrics and performance assurance plans in the Verizon East territory. I am a regular participant in the New York Carrier Working Group ("CWG") conducted under the auspices of the New York Public Service Commission. I was also a principal negotiator of a collocation settlement agreement between Verizon and CLECs covering the Verizon South jurisdictions, including West Virginia. In addition, I testified in multiple unbundling and alternative regulation cases in Pennsylvania pursuant to Chapter 30.

5. I have testified before the state commissions in: Delaware, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, and Virginia. I also testified before the Federal Communications Commission in the Verizon – AT&T arbitration proceeding. Recently, I was AT&T's principal participant in the series of West Virginia workshops related to this proceeding.

6. I am Robert J. Kirchberger. My qualifications are set forth in detail in my accompanying State of Competition Declaration.

PURPOSE OF DECLARATION

7. The purpose of our Declaration is to explain why certain Verizon practices and polices demonstrate that it is premature to recommend Verizon entry into the

interLATA long distance market in West Virginia. Specifically, we address deficiencies in the processes related to: (1) dark fiber, (2) high capacity loops, (3) reuse of collocation space and (4) directory listings. These problems relate to Checklist Item 1 (Interconnection); Checklist Item 2 (Access to UNEs); Checklist Item 4 (Local Loops); Checklist Item 5 (Local Transport); Checklist Item 8 (White Page Listings); and Checklist Item 13 (Reciprocal Compensation).

8. The numerous difficulties with Verizon's OSS and the KPMG test, including billing issues, are addressed in detail in the OSS Declaration filed concurrently. Over and above those problems, it is clear that until CLECs are ordering UNEs in volumes large enough to "stress test" Verizon's *West Virginia* systems -- computers and personnel – a final conclusion cannot be reached as to the adequacy of Verizon's OSS. Moreover, it is critical to determine the impact on CLECs that Verizon's announced reduction of 10,000 personnel will have, both on Verizon's ability to manually process CLEC OSS orders as well as CLEC support and all aspects of non-discriminatory access and interconnection.[2]

CHECKLIST ITEMS

A. Checklist Items 2 (UNEs) and 4 (Local Loops): Verizon's "No Build" Policy for Provisioning Loops to CLECs is Discriminatory and Artificially Inflates CLECs' Costs and Thereby Restricts Competition in West Virginia

9. A broken process that needs fixing before Verizon obtains Section 271 authority in West Virginia is the high-capacity[3] UNE facility "three-step" minuet that

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[2] *See* http://www.newsday.com/business/ny-bzveri052611205mar05.story?coll=ny%2Dbusiness%2Dutility

[3] The High Capacity Loop UNE includes loops used to provide DS1 and DS3s.

CLECs must endure in order to obtain, for example, a DS1 loop as a UNE.[4] Verizon has enforced a discriminatory and anticompetitive "no facilities" policy, whereby Verizon refuses to provide CLECs unbundled loops when doing so purportedly would require "additional construction." Yet, Verizon aggressively solicits and fills orders received from its retail end users for the same capacity that Verizon refuses to provision to CLECs as UNEs. Further Verizon will fill requests for these same circuits, not as UNEs but rather at retail charges for "special access" that can be *five times* the recurring cost of a DS1 loop plus cross-connect. As a result, CLECs are forced to engage in a burdensome and costly three-step process that needlessly delays service to CLEC customers.

10. The three step process, described in more detail below, favors Verizon's retail operations and discriminates between Verizon and CLEC end user customers, in contravention of the requirements of the Act. Moreover, it is wholly inconsistent with UNE pricing because the prices for UNE loops, switches and other facilities typically include a substantial percentage of spare capacity to allow for future growth, yet Verizon's practices with respect to hi-cap loops and Interoffice Facilities ("IOF") deny CLECs the benefit of that spare capacity even though they are paying for it in the UNE price.

11. Step one of that dance is for the CLEC to seek to order the loop. Verizon may fill the order, but often it does not, claiming that "no facilities" are available. Verizon has repeatedly stated that it is not a "construction company" for the CLECs and therefore refuses to provision hi-cap facilities such as UNEs to CLECs whenever

[4] The same process applies to DS3 and other high-capacity facilities, whether loop, interoffice facilities ("IOF") or entrance facilities (Verizon central office to a CLEC's premises).

"construction" is purportedly required. And it is Verizon that unilaterally determines what is and what is not "construction." In essence, Verizon can define away whatever portion of the CLEC's wholesale orders for hi-cap facilities it deems necessary to suppress. Most troubling is that a CLEC has no way of knowing if or when its UNE order for a hi-cap loop facility will be honored.

12. Step two of the minuet requires the CLEC to either wait some indeterminate period of time until the facility is available – which often means losing its customer – or reorder the identical facility as special access, at a much higher rate. Verizon will do "construction" for special access but not UNE orders. Therefore, CLECs frequently have no real choice but to order the special access and pay the higher rates if they want to retain their customers. The added problem is that if the CLEC first submits the order as a UNE order, and no such facilities are available, then the CLEC must start over again by submitting an access order, initiating the provisioning interval a second time.

13. Not only are the special access rates higher than the UNE rates, but the CLEC and its customer suffer a delay in the installation of the facility. Verizon implies that this delay – which could be as long as two months according to evidence presented in the Virginia 271 proceeding – is justified because "construction" is taking place. But there is no evidence that Verizon's retail sales organization and its customers suffer these delays, and plenty of reason to believe that they do not. The delay cannot be any greater for the CLEC and its customer than for Verizon and its customer; the Act requires no less.

14. The third and final step is to convert the special access facility to a UNE facility. To do so, the CLEC must order a termination of the special access facility and then order a UNE or combination of UNEs to replace it. Presumably, Verizon cannot, at this point, claim "no facility" as the reason for not honoring that order. But the CLEC must keep track of each separate order and when the conversion of each facility can take place, because Verizon's special access hi-cap facilities have minimum service periods – two months for DS1 and one year for DS3. This administrative process and bill validation process needlessly increases CLEC costs. Moreover, Verizon gets to collect the higher special access rates for the hi-cap facility for the minimum service period, or else the CLEC must pay early termination penalties.

15. It is self-evident that the current wholesale process for UNE hi-cap facilities burdens CLECs and their customers and inhibits competition. CLECs are denied access to the spare capacity that they pay for as part of the UNE prices for loops, switches and other facilities. There is no metric or oversight that effectively verifies Verizon's assertions of "no facilities." The current process is pure and simple discrimination because it is obvious that Verizon would not refuse to provision retail customer orders submitted by its retail sales organization because of tortured claims of "no facilities." Orders placed by Verizon's wholesale customers are often rejected rather than filled, and then the CLEC is subjected to the three-step process that Verizon does not subject itself

to.[5] Thus, CLECs -- and CLEC customers -- do not have nondiscriminatory access to hi-cap facilities. This is harmful to the deployment of facilities-based competition.

16. The very real anticompetitive impact of Verizon's "no facilities" claims were described in detail in the continuing West Virginia 271 Workshops. FiberNet in particular explained the difficulties it had in ordering DS-1 UNE loops from Verizon including rejected DS-1 UNE loop orders on the basis that there was "no facilities." Indeed, FiberNet indicated at the recent § 271 workshops that approximately 60% of its EEL DS-1 orders were rejected. FiberNet, therefore, was compelled to order DS-1s through the more costly Special Access tariff. FiberNet's market experience demonstrate the very real problems associated with Verizon's discriminatory "no facilities" policy.

17. In sum, Verizon unreasonably discriminates against its wholesale customers when it provisions high capacity loops. As a result, Verizon WV does not satisfy Checklist Items 2 and 4.

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[5] In New York, under directive from the Commission, Verizon and CLECs developed a "less bad" process which enable the CLEC to indicate on the original UNE order that if a "no facilities" condition is encountered that the order should be fulfilled as a special access order. The effect of this change is that a CLEC does not have to go back to square one and place a special access order in a "no facilities" situation, thereby reducing the overall interval. On the other hand, this process gives Verizon even greater discretion to conclude that there are "no facilities." Indeed, by ordering under this process, a CLEC is effectively giving up its right to contest a "no facilities" condition.

B. Checklist Item 4 (Local Loops) and Checklist Item 5 (Local Transport): Verizon WV Has Not Unequivocally Confirmed that It Will Adhere to the FCC's Rulings on Dark Fiber.

1. Verizon's Current Dark Fiber Practices Discriminate Against Its Wholesale Customers

18. The issue of dark fiber and the terms and conditions of its availability to CLECs has been a sore point between Verizon and the CLEC industry ever since the FCC made dark fiber a UNE in the *UNE Remand Order*,[6] and continues to be a sore point here. Currently, Verizon WV's dark fiber practices suffer from two significant flaws. First, Verizon does not act as a commercially reasonable wholesale provider of dark fiber, willing to sell dark fiber to CLEC customers; instead Verizon only grudgingly provides minimal or inadequate information as to what fiber is available and where it can be found. Second, Verizon confounds CLECs with a convoluted and unreasonable dark fiber ordering process.

19. Verizon WV makes it difficult for CLECs to know where dark fiber is located. Verizon WV is unwilling to give CLECs a reasonable, network overview of available fiber, leading to pin-the-tail-on-the donkey searches for available fiber using degraded and inadequate information. Verizon WV requires that CLECs must specify the fiber end points *exactly* for there to be any chance of identifying available fiber. It seems that Verizon will only inform a competitor whether dark fiber is available between two precise locations if the competitor specifically inquires about the particular exact route. Alternative routes between the same points should also be evaluated before

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[6] Third Report And Order And Further Notice Of Proposed Rulemaking, *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, 15 FCC Rcd. 3696 (1999).

rejecting the request. Verizon's process forces a CLEC, essentially, to compel Verizon to lease it dark fiber. That is not how a wholesale supplier should treat its customers. One would expect a wholesale supplier to be actively seeking wholesale orders, not frustrating them.

20. Such discriminatory requirements are precluded by the Act and the FCC's rules, as the FCC made plain in the *Virginia Arbitration Order*:

> The Commission has made plain that incumbent LECs must provide to competitors the same detailed underlying information regarding the composition and qualifications of the loop that the incumbent itself possesses....In addition, the Commission's rules ... preclude any requirement by Verizon that AT&T submit multiple inquiries to discover whether fiber is available along each leg of a desired route.[7]

21. Second, the real "Catch 22" starts after available dark fiber is identified, because Verizon does not permit a CLEC to order it until it has a collocation arrangement with a fiber termination panel (at each end).[8] In other words, once the dark fiber is identified, the CLEC must first order the collocation arrangement – with intervals of anywhere from 30 to 86 business days, depending on the type of collocation;[9] the CLEC may not <u>concurrently</u> order from Verizon both the collocation arrangement and the dark fiber. However, by the time Verizon completes the collocation interval and the *second* order for fiber is submitted, the fiber may then be "not available." Verizon has not permitted a CLEC to reserve dark fiber (although Verizon effectively does so for its own

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[7] *Id.* ¶ 473.

[8] Obviously, without fiber, the CLEC's collocation would have no need for a fiber termination panel. However, without a fiber termination panel, Verizon precludes a CLEC from ordering dark fiber.

[9] Verizon WV Response to AT&T 3-17.

purposes). Simply stated, because Verizon's current OSS and practices are inadequate to support a parallel process of accepting the two orders and coordinating the work on the two orders concurrently – one for dark fiber and one for the augmentation of a fiber termination panel – Verizon exposes the CLEC to the loss of the otherwise available dark fiber. It would be bad enough if a CLEC's initial dark fiber request were merely denied, but there are circumstances in Verizon's process where a CLEC may spend $4000 or more augmenting a collocation arrangement with a fiber termination panel but end up with nothing to show for this expense.[10] In the *Virginia Arbitration Order* the FCC specifically required Verizon VA to provide a 10-day hold period for dark fiber between the pre-order and order stages of the ordering process, and a 90-day reservations period from the time of confirmation of a request by AT&T for specific fiber facilities, pending the build or augmentation of collocation facilities.[11]

22. In Pennsylvania, AT&T discovered that the engineer who processed the CLEC's dark fiber application was the same engineer who has responsibility for Verizon's retail fiber projects. If this were true in West Virginia, it would constitute a direct conflict of interest and would be inconsistent with the Chinese wall that should exist between Verizon's retail and wholesale operations. In essence, there would be the means, motive and opportunity to make the available dark fiber "disappear" in the time between the initial inquiry and the time that it is available to order. There is no legitimate, physical or technical reason that the dark fiber and the fiber termination panel

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[10] For virtual collocation costs, *see* Verizon WV, Inc. Tariff P.S.C.-WV.-No. 218, § 2.J.4.a.

[11] *Virginia Arbitration Order*, ¶ 460.

cannot be concurrently provisioned; this is a plain defect in Verizon's OSS and results in discriminatory provisioning of UNEs.[12]

23. To ensure that dark fiber is made available under nondiscriminatory terms and conditions, Verizon must provide CLECs a simple commercially reasonable preorder and provisioning process whereby CLECs could reserve dark fiber for a period sufficient to allow Verizon build the collocation facilities to connect the dark fiber.

24. Verizon likewise refuses to provide dark fiber through intermediate Central Offices (i.e., from Central Office "A" to "B" and onto "C" or the CLEC's network). Also, Verizon currently refuses to provide dark fiber with intermediate electronics, such as repeaters. Verizon VA, however, was expressly required to do both in the *Virginia Arbitration Order.*

2. Verizon Has Not Yet Adequately Evidenced Its Adherence to Dark Fiber Obligations Under the FCC's Virginia Arbitration Decision

25. The dark fiber ordering and provisioning process was extensively debated in the AT&T and WorldCom Virginia arbitration proceedings before the FCC. But the *FCC Virginia Non-Price Arbitration Order*[13] has clarified Verizon's dark fiber obligations. Verizon now asserts that "[a]s of November 1, 2002, Verizon WV will, *in the course of interconnection agreement or interconnection agreement amendment negotiations*, propose terms and conditions for its dark fiber product that implements

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[12] If, however, Verizon agreed to the Virginia Arbitratiòn 90 day reservation period, this issue would become moot.

[13] *Memorandum Opinion and Order*, CC Dockets Nos. 00-218, 00-249 and 00-251 (released July 17, 2002) ("*Virginia Arbitration Order*").

those rulings on dark fiber that the FCC determined in its July 17, 2002 Memorandum and Order in that Verizon Arbitration, are required by the Act or the FCC's rules subject to any reconsideration, appeal, modification or final adjudication of that FCC Order or any revision of the Act or the FCC rules." (Joint Stipulation, ¶ 6). Verizon has made a similar verbal commitment in the West Virginia Workshops.

26. As of this filing, Verizon has not yet produced this language to the Commission and parties for review and comments. A promise to negotiate made *just prior to* the Commission's consideration of its 271 application is vacuous at best. Until Verizon provides the precise language for inspection and review by the parties and the Commission, this checklist requirement cannot be considered satisfied.

27. Until the process is fixed, and CLECs have equal access to the dark fiber, Verizon's § 271 application is premature. Verizon's new "offer" that CLECs may "negotiate" with it about implementing the FCC's decision in the Virginia Arbitration does not inspire confidence that these critical dark fiber issues will be properly resolved. And, it goes without saying, any offer to negotiate *after* Verizon has received 271 approval is troubling. Verizon's promissory compliance to fulfill *current* obligations is insufficient; these are not new or novel requirements. If Verizon now intends to comply with the FCC's pronouncements on these issues, it should do so, in writing, *prior to* the Commission considering Verizon WV's 271 application.

28. And even if Verizon cures the dark fiber availability and provisioning issues we describe above, that will not completely cure the problems. As we explain in more

detail in our accompanying OSS Declaration, Verizon WV has no OSS in place, or certainly has not evidenced such capability, to effectuate its dark fiber ordering and reservations obligations identified in the *FCC VA Non-Price Arbitration Order*. Until Verizon implements the methods and procedures to effectuate its "reservation" obligation, similar to the set-aside that it provides to its own retail operations, CLECs are at a distinct disadvantage vis-à-vis Verizon WV's retail operations. This clear discrimination problem must be corrected before Verizon WV is granted interLATA long distance authority.

C. Checklist Item 8 (White Pages Directory Listings): Verizon's Directory Listings Process Was Not Directly Tested and is Flawed.

29. Directory listing errors are especially egregious and have a severe impact on consumers that is not readily remedied.[14] If directory-listing information for a consumer is omitted, is published when it should be unpublished, or is listed incorrectly – particularly when the error is severe – there is no practical means to correct the error short of re-publishing the entire directory. These errors remains in place for the entire annual directory publication cycle. As a practical reality, the consumer must usually endure the error and wait until the next directory a year later; loose-leaf errata directory sheets are no substitute for a correct listing in the directory.

West Virginia Discriminatory Performance

30. In the workshops, CLECs described the significant directory listings errors that they have experienced in West Virginia. This means that CLECs are receiving

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[14] Contrast to rate, repair, or installation complaints which lend themselves to Commission directed resolution.

discriminatory treatment because, in sharp contrast to Verizon's wholesale performance, Verizon's directory listing accuracy for its own retail operation is an outstanding model of nearly perfect performance. Verizon VA reported publicly that its consumer relations group had only registered thirteen White Pages Directory Listing retail complaints, or approximately one per hundred thousand listings, 1:100,000.[15] Verizon WV, for its part, claims it has no corresponding data on the accuracy of its Directory Listings, but concedes that the quality of its retail Directory Listings is high.

31. Verizon WV bears the burden of proving that it is providing non-discriminatory service.[16] From the experience of the CLECs, it is clear that Verizon cannot meet that burden. The CLEC experience is quite different that what Verizon experiences in its own retail operation. FiberNet, Stratuswave, and NTELOS have raised West-Virginia specific, current occurrences of significant directory errors. Verizon has had to hold up publication of four West Virginia directories to resolve recent problems. FiberNet, NTELOS, and Statuswave have detailed the errors endured, the burdens they bear in working with Verizon's discriminatory Directory Listing process, and in particular the harmful competitive effect of their irate customers who suffer Directory

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[15] Verizon VZ-VA FCC 271 Ex Parte Letter dated September 25, 2002 from Ann D. Berkowitz to Marlene H. Dortch.

[16] *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, CC Docket 96-98, Second Report and Order and Memorandum Opinion and Order, FCC 96-333 (rel Aug. 8, 1996), at ¶134. ("[w]hen a dispute arises as to the adequacy of the access received by the competitor's customers, the burden is on the LEC permitting access [Verizon WV]to demonstrate with specificity: (1) that it is permitting nondiscriminatory access to directory access and directory listings; and (2) that the disparity in access is not caused by factors within its control.") See also n. 244.

Listing errors caused by Verizon.[17] These errors are plainly competitively significant and further impede a CLEC's opportunity to compete.

32. Even the uncontested errors demonstrate the problem with Directory Listing errors. After CLECs leveled verifiable claims of Directory Listings errors, then Verizon investigated. Verizon's own investigation confirmed 114 CLEC Directory Listings errors in just four directories, out of 11,182 total CLEC listings in those directories. Verizon has introduced *no evidence* that its suffers from a similar level of Directory Listing inaccuracy.[18] Verizon concedes that 67 of these were "severe errors." Forty-four of FiberNet's 62 "severe errors" had an identified root cause of: Verizon "Rep' Error", Verizon ILEC system error, or VIS system error.

Number of CLEC Errors	Directory	% of CLEC Listings in Error	% of Verizon Listings in Error
32	Montgomery	0.67%	???
13	Point Pleasant	0.85%	???
35	Beckley	1.60%	???
34	Morgantown	1.20%	???
114	4 Directories	1.02%	???

Directory Listing Not Directly Tested by KPMG

[17] WV PSC 271 Workshop, October 23, 2002.

[18] While clearly not every directory listing inaccuracy results in a consumer complaint, Verizon fails to concede that over 1% of its retail directory listings are inaccurate, fails to evidence such non-discrimination, and fails to explain why its complaint rate is only 1:100,000 while Verizon concedes WV CLECs correspondingly have at least 1,000 inaccuracies, or a ratio of 1,000:100,000. Verizon offers no explanation why, if it were providing parity, it would only receive 1 complaint for every 1,000 retail inaccuracies, including business directory listing inaccuracies.

33. In the Virginia OSS test, KPMG did not directly test Directory *Listings*. Rather, KPMG simply checked the Verizon VA directory *assistance* database, assuming, without foundation, that all directory listing errors and omissions will concurrently occur in both directory assistance and directory listings. Even Verizon does not make such an assertion; in contrast Verizon has publicly conceded a number of possible cases where the two can or have diverged. Our simultaneous OSS Declaration discusses this significant shortcoming in the KPMG test. However, even KPMG found Verizon accuracy to only be 58.8% on its first test[19], and Verizon only attained a 94.7% accuracy rate falling short of the 95% benchmark.[20]

Overview of Directory Listing Process

34. CLECs initiate a directory-affecting order by sending Verizon a Local Service Request (LSR) through the OSS interface. Verizon acknowledges and separately confirms this directory-affecting LSR with a Confirmation (LSRC).[21] Verizon converts the LSR into an internal Service Order(s), depending on the product or service. Some LSRs are converted via a fully automated "flow through" manner, and some are

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[19] August 14, 2001. Admittedly Verizon had to make substantial improvements if it hoped to pass the test. Verizon made a number of improvements later to its process, proving the deficiency of its process.

[20] KPMG nonetheless "satisfied this test point because '94.7% is not statistically significantly different (p-value = 0.49) from the benchmark of 95% with 95% confidence.'" *Report of Alexander F. Skirpan, Jr., Hearing Examiner,* (Skirpan Report) VA SCC Case No. PUC 2002-00046, at 146. Such p-value handicapping while permitted by the KPMG Master Test Plan, is not allowed under the Carrier-to-Carrier Guidelines in WV or any Verizon jurisdiction North or South.

[21] "[C]LECs receive an electronic confirmation order from Verizon Virginia [Maryland, the District, and West Virginia respectively], which if compared to the associated LSR, permits CLECs and Resellers to determine whether their listing information was processed accurately. *Skirpan Report,* at 136.

processed manually. One Service Order updates both the Verizon Directory-Assistance database used by "411", the Service Order is also transmitted downstream to Verizon's directory publishing affiliate, Verizon Information Services (VIS), which stores the information in its database.

35. VIS periodically converts manipulated portions of its database into published telephone directories, into phonebooks. "[T]hirty days prior to the close date of a particular White Page directory, VIS gives each carrier a Listing Verification Report (LVR) ,which contains all listings for the carrier that are in the VIS database for publication in the upcoming directory."[22] Verizon recently upgraded the LSR by replacing the voluminous paper version with a sortable, electronic version.[23]

36. Verizon claims there are four checkpoints where CLECs can verify the accuracy of the its Directory Listings: (i) the local service confirmation, the LSRC, (ii) the Billing Completion Notice (BCN), (iii) through a Directory Listing Request (DLR) OSS order query that enables the CLEC to retrieve listing data from VIS for a specific customer at any time, and (iv) the Listing Verification Report.[24]

No Metric Measures End-to-End Directory Listing Accuracy

37. The OR-6-04 metric does not prove Verizon provides non-discriminatory Directory Listing performance to CLECs. It only measures a sample, and that sample is only of the subset of manually handled orders. Even at that, it only measures *one link in*

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[22] *Id.* at 136.

[23] *Id.* at 143.

[24] *Id.*

the chain of events between the receipt of the CLEC's LSR directing Verizon to publish the directory listing, and the eventual end stage where the directory listings are actually published in the phonebook. The metric compares the CLEC's LSR only to the next immediate step, the creation of the Verizon Service Order. The metric does not compare the LSR to the directory publisher's, (VIS), database; certainly the metric does not compare the LSR to actual published listings. Thus, KPMG's failure to test directory listings in the Virginia test, and the absence of a meaningful metric of the actual end-to-end directory listing process, is a serious omission that should be rectified before the Commission rules on Verizon WV's § 271 application.

Special Studies

38. Verizon has undertaken "special studies" after the KPMG test, where Verizon compared some of the Service Orders, those associated with only the manually processed Service Orders versus the Directory Listing database. Verizon found that between Verizon and its directory publishing (VIS) affiliate's database, they had created (otherwise unmeasured) errors. If this test stands for anything, it is that Verizon *creates* errors after it receives the CLEC's order, and that it *could* proactively search for these Verizon-created, internal errors, such as by comparing its various internal electronic records. Yet Verizon does not undertake to do so as a commercial matter.

The LVR: Discrimination in Quality or Discrimination in Cost

39. Verizon is obligated to provide CLEC access to directory listings that is non-discriminatory with respect to both cost and quality.[25] Verizon waffles as to the Listing Verification Report (LVR) process. Verizon's reliance upon the CLECs to police the accuracy of their own customers' directory listings is flawed and needs to be fixed before Verizon WV obtains § 271 authority in West Virginia.[26] The LVR process seeks to shift to the CLECs almost the entire responsibility of verifying the accuracy of Verizon's affiliate's directory listings database.

40. But Verizon cannot both argue that errors on the LVR do not matter because the CLEC can detect and correct them, and then argue that CLECs are not obligated to use the LVR process and thus are not burdened with anti-competitive costs in order to achieve comparable quality with Verizon. Verizon must either pass or fail on the accuracy of the LVR, i.e., on the accuracy of the published directory without any LVR correction of Verizon errors; it is reasonable to do so because Verizon's retail operation does not utilize, presumably does not find it prudent to use, the LVR. On the other hand, if Verizon needs the "clean up" of the LVR process to obtain a non-discriminatory quality level, then it must accept the discriminatory and burdensome price, terms and conditions that the LVR verification process foists on the CLECs. Verizon can have it either way—but not both ways.

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[25] *Second Report and Order* at 97-103.

[26] To be clear, CLECs are responsible for any errors that they submit to Verizon. Likewise, Verizon should be responsible for the errors and omissions that it subsequently commits. However, through the LVR process, Verizon seeks to foist onto CLECs the responsibility for detecting errors committed by Verizon.

41. Moreover, the LVR is a red herring as to catching Verizon's errors. It is a weak and burdensome vehicle for CLECs to use to verify directory listings; it generates costs for CLECs which Verizon does not bear, and which a competitive market does not allow to be recovered. It does not even, for example, show precisely how a listing will actually appear in the directory; it is not a galley proof. It is only a snap shot, ordinarily sent to CLECs only 30 days before the directory closes (essentially goes to the printer), giving the CLEC precious little time to verify and correct directory listings errors. Requests for earlier delivery open wider the window for undetected post-LVR errors.

42. Aside from the LVR[27], CLECs have no reasonable means to verify the inclusion and correctness of their customers in VIS's directory listings. Preorder DLRs queries are costly—Verizon charges the CLEC for each, and each query is only for a single account. At the October 23rd Workshop, Verizon stated that CLECs should not rely on the LSR Confirmation which is returned to them by Verizon. This is directly contrary to Verizon's testimony in Virginia. If the CLEC directs Verizon to perform a directory listing, and pays Verizon a Service Order charge, and Verizon affirmative confirms on the LSRC that it will do so, then CLECs are entitled to enforce that confirmation; otherwise Verizon's confirmation is worthless. It is unclear if Verizon is not also reneging on its position in Virginia testimony that the BCN is also a checkpoint of the directory listing.

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[27] Of course Verizon could and should compare its CSR database versus its VIS database and proactively detect and correct the errors. This is Verizon's burden, not the CLECs'.

43. Verizon's retail operations do not face the same difficulties as the CLECs; in fact, Verizon retail does not even utilize the LVR, which demonstrates that it is—and should be--commercially reasonable to not incur the expense and diversion of reviewing the LVR. Fortunately, as is the Commission's experience, Verizon's retail customers have not suffered from high error rates. Verizon retail directory listing errors are remarkably rare, which is the parity standard.

44. CLECs cannot and should not be drafted as Verizon's uncompensated quality assurance department. When CLECs send an LSR order to Verizon, and Verizon confirms[28] the order after that point in the process, Verizon is responsible for any subsequent errors, any deviation from the governing confirmation.[29] LVRs, BCNs, and DLR look ups do not relieve Verizon of its obligation to fulfill the directory listing order as they confirmed that they would.

No Measure and No Showing

45. The fundamental problem is that there is no end-to-end process that verifies that the final result – the printed directory – will be comparably free of Verizon errors.[30] Verizon's responsibility does not end at the point that it hands the directory listings data off to VIS. Verizon cannot distance itself and avoid its responsibility behind

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[28] An incomplete or incorrect order is queried/rejected back to the CLEC for clarification or correction. Once the CLEC resubmits the corrected order, Verizon will likewise acknowledge and confirm the order.

[29] Possible supplemental orders would likewise be confirmed, and again Verizon is responsible to fulfill its subsequent confirmation which then becomes the governing confirmation.

[30] CLECs are responsible for their errors. CLECs can verify the LSRC's Directory Listing information verses the submitted LSR. If there is no discrepancy, the CLEC should expect comparably accuracy in the printed directory.

corporate structures. Verizon's statutory obligation is not avoided or waived because Verizon happens to publish the directories through an affiliate. Final control of the directory listings process may be with VIS, but responsibility remains with Verizon WV. Whether VIS is in some sense an unregulated entity is a red herring. Verizon's responsibility under the Act and Checklist item 8 is to provide directory listings to CLECs without discrimination, that is to publish the listing as Verizon's confirmation commits it to do, and with no further action or expense undertaken by the CLEC. It must follow the process through from end-to-end. Verizon WV's failure to do so is significant and adverse to competition in West Virginia. This Commission should offer a cold reception to Verizon's attempts to downplay the problem. As the Hearing Examiner in Virginia stated: "I disagree with any attempt by Verizon Virginia to minimize the level of directory problems that have been experienced in Virginia."[31]

D. Verizon Fails the Requirements of Checklist Item 1 by Failing to Pay Lawful Interconnection Charges for Services Provided by CLECs

46. Section 251 of the Act, and the FCC directives implementing that statute, most recently in the *Virginia Arbitration Order*, clearly establish (1) that CLECs have the right to designate the location(s) where its local traffic and Verizon's local traffic will be exchanged (the "point of interconnection" or "POI"), and that (2) Verizon bears the financial responsibility for the costs incurred by the CLECs in terminating Verizon's traffic (and CLECs bear the reciprocal financial burden for the costs incurred by Verizon in terminating the CLEC's traffic).

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[31] *Skirpan Report* at 146.

47. Verizon is not complying with those obligations. To the contrary, in the guise of its so-called "geographically relevant interconnection point" ("GRIP") policy, and the related "VGRIP" scheme (Virtual GRIP), Verizon is requiring CLECs to interconnect at either a Verizon tandem or end office switch serving the Verizon called party. Under its policy, Verizon seeks to determine the POI and in effect shift some of the costs of terminating Verizon's traffic to the CLECs. This is contrary to clearly established law, as we will demonstrate in Sections 2 and 3, below.

48. Verizon may claim that it is in compliance with the law because its GRIPs policy is simply a negotiating position in negotiations for interconnection agreements, and that carriers are free to agree or not agree to that policy in their interconnection agreements, as they wish. This is a hollow claim. The fact is that a future agreement on an interconnection agreement with Verizon without a GRIPs provision is highly unlikely, because such a negotiated interconnection agreement can be freely opted into by other CLECs under § 251(i) of the Act, a result that Verizon obviously would seek to avoid. Rather, Verizon is apparently on a course to force CLECs to take interconnection agreements to arbitration under the Act because it chooses to not agree to an interconnection agreement without a GRIPs or VGRIPs provision. Verizon knows that it will lose the GRIPs issue in any arbitration, as it did in the *Virginia Arbitration Order*, but it benefits in that the results of an interconnection agreement arbitration cannot be imported into other Verizon jurisdictions under the terms of the Bell Atlantic-GTE

merger requirements.[32] In taking this position Verizon is thumbing its nose at the law and Verizon's obligation to bargain in good faith.

49. Under its scheme it is Verizon, rather than the CLEC, that is reserving the right to select the locations where traffic is delivered for termination, for both its traffic and for the CLEC's traffic, thus shifting – improperly-- a substantial amount of its origination and termination costs to the CLEC. Accordingly, the Commission cannot find that Verizon is in compliance with its obligations under Item 1 of the Competitive Checklist, 47 U.S.C. §271(c)(2)(B)(i), so long as Verizon continues to adhere to its current policies with respect to GRIPs and VGRIPs. The Commission should not approve Verizon's § 271 bid unless and until Verizon agrees to remove GRIPs and VGRIPs provisions from existing West Virginia interconnection agreements, and cease insisting on its GRIPs and VGRIPs proposals in current and future negotiations with CLECs.

1. The direct effect of Verizon's GRIPs scheme is to artificially reduce Verizon's costs while maximizing those incurred by the CLECs.

50. The essence of Verizon's GRIPs scheme is a fiction that has no basis in the Telecommunications Act or the FCC rules. Specifically, under GRIPs Verizon fabricates a distinction between a POI and what it terms an "interconnection point" ("IP"). Verizon then treats the POI as the location where the parties' facilities *physically* interconnect, but uses its own creation -- the "IP"-- as the location where the carriers' *financial*

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[32] Under the GTE merger requirements, a voluntary commitment by Verizon in one jurisdiction must be offered to CLECs in all other Verizon/GTE jurisdictions. Thus, Verizon has the perverse incentive to arbitrate, rather than settle issues, because the litigated results cannot be imported to other states.

responsibilities begin and end, *i.e.*, where reciprocal compensation begins, or where the originating carrier delivers its traffic for termination.

51. The direct effect of this scheme is to artificially reduce Verizon's costs while maximizing those incurred by the CLEC. Those costs to the CLEC can be quite considerable. For example, in Delaware, Cavalier raised a claim for over \$9 million growing at the rate of over \$360 thousand per month. Similarly, in the Virginia arbitration, AT&T estimated that Verizon's similar GRIPs proposals would increase AT&T's local interconnection costs by between \$1,800,000 and \$3,079,000 annually. In Virginia, AT&T's 3-year costs would increase anywhere from \$6,414,000 to \$10,749,000.

52. Granting Verizon the ability to impose points of interconnection on CLECs would give it the power to directly –and anti-competitively – affect the CLECs' costs. Although CLECs and ILECs each are responsible for the total costs of carrying their originating traffic to the called parties, the selection of a POI affects how the CLECs' costs are split between origination and termination, and what the level of those costs may be. For example, a CLEC that is required to deliver its traffic to a POI at Verizon's tandem will pay both transport and termination costs to Verizon to compensate it for taking the traffic from the tandem to the end office and ultimately to the called party. The CLEC's origination costs in that circumstance are the costs associated with getting traffic to the Verizon tandem, plus its reciprocal compensation costs for transport and termination. If, on the other hand, the CLEC terminates its traffic at Verizon's end

office, its origination costs will be the costs to get its traffic to the end office, while its reciprocal compensation costs will only be the termination portion of reciprocal compensation (the cost from the end office to the called party). Thus, selection of the POI has a marked impact on a CLEC's costs of transport and termination.

53. If Congress had wanted ILECs to have the ability to designate interconnection points and to have CLECs bear the same duty in establishing the same number and location of interconnection points that ILECs have, it could have specifically granted ILEC's that right as it did for non-incumbent carriers in § 251(c)(2). It did not, and the logic for not doing so is sound. New entrant CLECs were not to burdened by the inefficiencies inherent in the ILEC's embedded network; instead they were free to build efficient network architectures driven by efficient price signals.

2. The FCC has emphatically rejected Verizon's GRIPs provisions in the *Virginia Arbitration Order*, and therefore Verizon cannot be permitted to retain such provision in its current interconnection agreements or propound them in current or future negotiations on interconnection agreements in West Virginia.

54. Neither the Act nor the Commission's rules or decisions sustains the distinction between the POI and IP that Verizon seeks to maintain. In fact, the Act and the FCC's decisions use the terms interconnection point and point of interconnection interchangeably and without such difference (see § 251(c)(2), providing that that CLECs may interconnect at any technically feasible point, ¶¶ 172 and 209 of the *Local Competition Order* citing §251(c)(2) in explaining how the POI selection affects a

carrier's costs of origination and termination,[33] and FCC rule 47 CFR 1.701(c),[34] establishing where reciprocal compensation begins). Nothing in the statute or regulations, creates, supports, or even suggests the critical division Verizon is attempting to impose on CLECs through its GRIPs scheme.

55. The FCC most recently reinforced this existing law when it ruled in the Virginia Arbitration proceeding that Verizon's GRIP and VGRIP proposals are inconsistent with existing law and must be rejected:[35]

> Verizon's interconnection proposals require competitive LECs to bear Verizon's costs of delivering its originating traffic to a point of interconnection beyond the Verizon-specified financial demarcation point, the IP. Specifically, under Verizon's proposed language, the competitive LEC's financial responsibility for the further transport of Verizon's traffic to the competitive LEC's point of interconnection and onto the competitive LEC's network would begin at the Verizon-designated competitive LEC IP, rather than the point of interconnection. By contrast, under the petitioners' proposals, each party would bear the cost of delivering its originating traffic to the point of interconnection designated by the competitive LEC. The petitioners' proposals, therefore, are more consistent with the Commission's rules for section 251(b)(5) traffic, which prohibit any LEC from charging any other carrier for traffic originating on that LEC's network; they are also more consistent with the right of competitive LECs to interconnect at any technically feasible point.

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33 Paragraph 172 explains that the interconnection obligation of 251(c)(2) "allows competing carriers to choose the most efficient points at which to exchange traffic with incumbent LECs, thereby lowering the competing carriers costs of, among other things, transport and termination." Paragraph 209 explains that "Section 251(c)(2) gives competing carriers the right to deliver traffic terminating on an incumbent LECs network at any technically feasible point, rather than obligating such carriers to transport traffic to less convenient or efficient interconnection points." *Local Competition Order* at ¶¶ 172, 209.

34 Specifically, 47 CFR 51.701(c) states as follows: (c) For purposes of this subpart, transport is the transmission and any necessary tandem switching of local telecommunications traffic subject to 251(b)(5) of the Act from the interconnection point between the two carriers to the terminating carriers end office switch that directly serves the called party, or equivalent facility provided by the carrier other than an incumbent LEC."

35 *Virginia Arbitration Order* at ¶ 53 (footnotes omitted).

56. The FCC's definitive statement in the Virginia arbitration proceeding on the clear meaning and effect of the law and the FCC rules should put to rest any arguments that Verizon WV might propound in favor of its GRIPs and VGRIPs schemes. The GRIPs issue was squarely presented and squarely decided by the FCC, unlike the case of the Pennsylvania § 271 proceeding.[36]

3. The FCC's Virginia Arbitration ruling is predicated on sound law and is supported by ample other authority at the federal and state levels.

57. Section 251(c)(2)(B) of the Telecommunications Act expressly obligates Verizon to allow CLECs to interconnect with Verizon's network "at any technically feasible point."[37] As the FCC explained, this requirement:

> allows competing carriers to choose the most efficient points at which to exchange traffic with incumbent LECs, thereby lowering the competing carriers' costs of, among other things, transport and termination of traffic.[38]

58. Thus, both the statute and the FCC rules confirm that each carrier is responsible for its origination costs – that is, the costs related to delivering that carrier's originating local traffic to the Point of Interconnection, or POI, the location where the parties mutually exchange their traffic.[39] Stated another way, the FCC has confirmed that

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[36] Verizon cannot hide behind the FCC's Pennsylvania § 271 Order to support its position. The FCC itself distinguished its discussion of the GRIPs issue in the Pennsylvania 271 case as "not determinative of the question." *Id.* at footnote 123.

[37] 47 U.S.C. §251(c)(2)(B).

[38] *Local Competition Order* at ¶ 172. This same principle was repeated with regard to origination costs, where the FCC stated "Section 251(c)(3) gives competing carriers the right to deliver traffic terminating on an incumbent LECs network at any technically feasible point on that network rather than obligating such carrier to transport traffic to less convenient or efficient interconnection points. *Id.* at 209.

[39] If the call is not a local call, then access charges rather than reciprocal compensation charges apply.

"A LEC may not assess charges on any other telecommunications carrier for local telecommunications traffic that originates on the LEC's network."[40]

59. Nothing in the Act or the Local Competition Order empowers the ILEC to select either the POI or the number of such POIs, and with good reason. The ILECs already have embedded, ubiquitous networks, while the CLECs are only beginning to build theirs. That is precisely why the FCC observed that:

60. Section 251(c)(2) does not impose on non-incumbent LECs the duty to provide interconnection. The obligations of LECs that are not incumbent LECs are generally governed by sections 251(a) and (b), not section 251(c). Also, the statute itself imposes different obligations on incumbent LECs and other LECs (i.e., section 251(b) imposes obligations on all LECs while section 251(c) obligations are imposed only on incumbent LECs).[41]

61. The FCC has consistently applied the Act and the Local Competition Order to prevent ILECs from increasing CLEC's costs by requiring multiple points of interconnection. The FCC's June 2000 Texas 271 Order re-emphasized the point:[42]

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[40] 47 C.F.R. §703(b). From the POI to the terminating customer, the other carrier assumes operational responsibility to take that traffic to the designated end user, and charges the originating carrier reciprocal compensation rates established under § 251(b)(5) of the Act. That statute requires carriers to provide for the mutual and reciprocal recovery by each carrier of the costs associated with transport and termination on each carrier's network facilities of calls that originate on the network facilities of the other carrier." The carriers should provide for that recovery through charges that reflect a "reasonable approximation of the additional costs of terminating such calls." § 252(d)(2)(A)(i)(ii).

[41] *Local Competition Order*, ¶ 220.

[42] Memorandum Report and Order, *Application by SBC Communications Inc., Southwestern Bell Telephone Company, And Southwestern Bell Communications Services, Inc. d/b/a Southwestern Bell Long Distance Pursuant to Section 271 of the Telecommunications Act of*

> Section 251, and our implementing rules, require an incumbent LEC to allow a competitive LEC to interconnect at any technically feasible point. This means that a competitive LEC has the option to interconnect at only one technically feasible point in each LATA. (citing, Local Competition Order ¶¶ 172, 209).[43]

62. The Courts and state regulators have affirmed this view. Federal courts have rejected as inconsistent with § 251(c)(2) incumbents' efforts to require competing carriers to establish points of interconnection in each local calling area.[44] The vast majority of

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1996 To Provide In-Region, InterLATA Services In Texas, CC No. 00-65, ¶ 78 (rel. June 30, 2000) (hereinafter "Texas 271 Order").

[43] The FCC made a similar pronouncement in a January 2001 Order granting in region interLATA authority to SWBT for Kansas and Oklahoma. Memorandum and Order, FCC 01-29, *Joint Application by SBC Communications Inc., Southwestern Bell Telephone Company and Southwestern Bell Communications Services, Inc. d/b/a/ Southwestern Bell Long Distance for Provision of In-region, interLATA service in Kansas and Oklahoma,* CC Docket No. 00-217 (January 22, 2001)("Kansas and Oklahoma Order"). Moreover, the FCC has found the right of a competing carrier to choose the point of interconnection, and conversely the unlawfulness of any attempts by incumbents to dictate points of interconnection, sufficiently clear and compelling to intervene in court reviews of interconnection disputes. For example, in an interconnection dispute in Oregon, the FCC intervened as *amicus curiae* and urged the court to reject US West's argument that the Act requires a competing carrier to "interconnect in the same local exchange in which it intends to provide local service." The FCC stated: "Nothing in the 1996 Act or binding FCC regulations requires a new entrant to interconnect at multiple locations within a single LATA. Indeed, such a requirement could be so costly to new entrants that it would thwart the Act's fundamental goal of opening local markets to competition." *Id.* at 20.

[44] *See e.g., US West Communications, Inc., v. Minnesota Public Utilities Commission, et al.*, No. 97-913 ADMAJB, slip op. at 33-34 (D. Minn. 1999) (rejecting US West's argument that section 251(c)(2) requires at least one point of interconnection in each local calling exchange served by US West); *U.S. West Communications, Inc. v. Hix, et al.*, No. C97-D-152, (D. Colo., June 23, 2000). (A district court in Colorado reversed a state commission's order that a CLEC must establish an interconnection point in every local calling area. The Colorado court held that under the Act and the FCC regulations, "it is the CLEC's choice, subject to technical feasibility, to determine the most efficient number of interconnection points, and the location of those points."); *US West Communications v. AT&T Communications of the Pacific Northwest, Inc., et al*, No. C97-1320R, 1998 U.S. Dist. LEXIS 22361 at 26 (W.D. Wa. July 21, 1998) (A district court in Washington affirmed the state commission's determination that AT&T may establish a single interconnection point within each LATA and rejected the ILEC's contention that a CLEC must have an interconnection point in every local calling area in which it offers service).

state commissions, as well, support the principle that it is the CLEC and not the ILEC that has the right to choose the POI locations.[45]

63. In sum, the applicable statutes, regulations, court decision and numerous state regulatory decisions all are in agreement on a fundamental proposition – it is the CLEC, not the ILEC, that gets to choose where to most efficiently interconnect with the ILEC's network. Verizon's GRIPs and VGRIPs proposals directly violates that principle, and seek to undermine the network interconnection efficiencies of new entrants.

64. The issues surrounding GRIPs cannot simply be passed off as a bilateral dispute over interconnection agreement language, as Verizon seeks to do. Rather, they go to the heart of Verizon's compliance with the explicit requirements of the Act and the FCC's regulations implementing those statutory directives. Verizon has not demonstrated that it is meeting the letter and intent of those directives because it retains GRIPs provisions in currently effective interconnection agreements and presses GRIPs demands in current interconnection agreement negotiations, and therefore fails to satisfy its obligations under Checklist Item 1. The Commission should not approve Verizon's

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[45] See, Opinion, *Application of AT&T Communications of California (U5002C), et al., for Arbitration of an Interconnection agreement with Pacific Bell Telephone Company Pursuant to Section 252(b) of the Telecommunications Act of 1996*, No. 00-01-022, p. 13 (CA PUC Aug. 3, 2000). (In California, the state commission similarly considered both statutory and policy grounds when it decided to adopt AT&T's proposal. The commission found that "AT&T is in the best position to analyze its traffic volumes and decide, in specific circumstances, whether it is more economical to interconnect at the tandem or end office."); Order Addressing and Affirming Arbitrator's Decision No. 5, *In the Matter of the Petition of TCG Kansas City, Inc. for Compulsory Arbitration of Unresolved Issues with Southwestern Bell Telephone Company Pursuant to Section 252 of the Telecommunications Act of 1996*, p.3,4, 9 (Aug. 7, 2000) (The Kansas Commission rejected SWBT's interconnection point arguments); Decision of Arbitration Panel, *AT&T Communication of Michigan Inc. and TCG Detroit's Petition for Arbitration*, Case No. U-12465 (Oct. 18, 2000) at 4, 19 (The Michigan PUC affirmed the arbitrator decision that AT&T had offered a better resolution to the interconnection issue).

application here unless and until Verizon agrees to remove GRIPs and VGRIPs provisions from existing West Virginia interconnection agreements, and ceases to insist on GRIPs and VGRIPs proposals in current and future negotiations with CLECs in West Virginia.

D. Checklist Item 2 (Collocation): Verizon Does Not Have Reasonable Procedures In Place for Issuing Credits to CLECs for the Return of Collocation Space or to Offer Reduced Collocation Prices for Returned Space.

65. When a CLEC[46] returns collocation space to Verizon, it is undisputed that it is entitled to a *pro rata* share of the non-recurring space and facilities charges when the collocation space is reused.[47] Verizon's intrastate collocation tariff expressly provides:

> Should a CLEC vacate its Collocation arrangement, the CLEC will be credited with the Space and Facilities Charge (less costs) upon subsequent occupancy of the same Collocation arrangement by another CLEC or if the same Collocation arrangement is used by the Telephone Company. The subsequent CLEC will be responsible for the payment of the remaining unamortized amount of the Space and Facilities Charge prior to occupying the Collocation arrangement.[48]

Verizon's federal tariff contains a very similar provision.[49] Such a refund requirement is necessary because, given the front-end loaded rate design of the collocation charge for the Space and Facilities, Verizon would otherwise over-recover its costs. Given that a CLEC could have easily paid $120,000 for the Space and Facilities Charge, CLECs have a substantial interest in the enforceability and implementation of these tariff provisions.

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[46] Although the term CLEC is used here, Collocators other than CLECs also purchase and presumably return collocation in whole or in part.

[47] Collocation, including this issue, has been raised in Formal Case No. 962.

[48] *See* Verizon WV, Inc. Tariff P.S.C.-WV.-No. 218, § 2.B.4.d.

[49] FCC No. 1, § 19 *et al.*

Verizon must have clearly established and public processes and procedures to fulfill this obligation; it does not.

66. Even though CLECs have returned a substantial amount of collocation space to Verizon throughout its footprint, it appears that very few credits have ever been issued. In West Virginia alone, Verizon has provisioned 79 collocation arrangements through July 2002 (Verizon WV Response to AT&T V-4(a)) (Attachment 1), CLECs have returned space on **[BEGIN VERIZON PROPRIETARY] [END VERIZON PROPRIETARY]** separate arrangements from December 29, 2000 through July 2002. (Verizon WV Responses to AT&T V-4b (attachment) and AT&T V-4c (attachment)) (Attachment 2). Of the **[BEGIN VERIZON PROPRIETARY] [END VERIZON PROPRIETARY]** arrangements returned to Verizon by CLECs in West Virginia, Verizon WV has provided credits for only **[BEGIN VERIZON PROPRIETARY] [END VERIZON PROPRIETARY]** reused arrangements. (Verizon WV Response to AT&T V-11 (attachment) (Attachment 3). Given that Verizon often asserts that collocation space is exhausted at certain central offices and that building additions are necessary or on-going, it seems unusual that Verizon WV has been so slow in issuing credits for returned space. Given the amount of returned space, these inadequate procedures create material problems for CLECs.

67. Presumably such returned space could be redeployed more readily than the standard interval, and incontestably new collocators would prefer to pay a lower (pro rata) charge than the full charge. The principal problem is there is no commercially

reasonable way for CLECs to track and verify the status of the returned space, and no way for incoming CLECs to identify before the fact, the availability of discounted space. Verizon does not have methods and procedures in place that utilize any sort of periodic communication to the CLEC regarding the status of what could easily be millions of dollars of returned collocation. Likewise, Verizon has not taken any steps to affirmatively communicate the availability of such returned collocation space to other potential users. Verizon admits in a discovery response that it "does not actively advertise the availability of returned space, nor is it under any statutory requirement to do so." Verizon WV Response to AT&T V-9 (Attachment 4). To the contrary, Verizon suggests that it is the *CLECs'* obligation to advertise the availability of this reduced space: "A 'potential subsequent collocator' can be made aware of vacated collocation space in many ways. The vacating CLEC could call other CLEC's [sic] send e-mails, or choose any number of methods by which they could identify the fact that they vacated collocated space." *Id.*

68. Although Verizon is *required* to post on its web site a list of collocation sites and whether or not they have space available, Verizon does not and will not add even a simple indicator along side each applicable site communicating that Verizon has collocation space available at a reduce price.[50] Verizon's reticence is particularly perplexing given that the FCC already requires Verizon to post the space availability on its website. This would be a rational way for Verizon, as a monopoly landlord, to communicate to collocators that it exhausted space at a central office. Given that this

[50] AT&T, however, is *not* suggesting that Verizon WV should maintain a current price of the returned collocation space given that the price changes on a daily basis.

information is already centrally located and maintained by Verizon, it clearly is reasonable that Verizon likewise list and maintain there the existence of reduced priced collocation.

69. As a result of Verizon's position, there is not a process in place that would confirm that the CLEC collocation space has been returned to Verizon and that the final steps of vacating have been accepted by Verizon; that would confirm and communicate to the vacating CLEC the starting information, then known so as to avoid surprise or dispute later; that would notify the vacating CLEC when the space was reused; or that would actually credit the vacating CLEC within a reasonable time; or that would support the calculation of any credit for subsequently reused space; or that would support the calculation of the rate charged to the subsequent CLEC. Indeed, CLECs do not receive any reports on the status of the thousands of dollars of returned space on any regularly scheduled basis. Verizon does not even provide such reports upon the request of a CLEC. If the space were never reused, the CLEC would never receive any notice from Verizon and yet would unable to distinguish that circumstance from a Verizon error or omission. This anti-competitive practice is patently unreasonable. Without any accountability, a CLEC would never be able to confirm whether or not Verizon actually reused the space and whether the CLEC was entitled to a refund.[51]

70. Most importantly for potential market entrants, a collocating CLEC who purchases returned collocation space is entitled to a discounted price. AT&T cannot

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[51] CLECs can only speculate as to whether Verizon is making its best efforts to reuse the returned collocation. Certainly, Verizon has the incentive to use all of its other collocation space *before* offering any of the returned collocation space.

ascertain from Verizon's declarations or discovery responses whether Verizon WV is actually provisioning this new space on a properly discounted basis, even though such discounted space appears to be available at many of Verizon's central offices.

71. Verizon must establish commercially reasonable methods and procedures that will periodically communicate to CLECs the status of the substantial returned collocations space, allow CLECs to verify the status of returned collocation space, and credit CLECs promptly and with a sufficiently detailed explanation when such space is reused. Such a process will require Verizon to affirmatively communicate availability[52] and the discount, returned space that is available in certain central offices, just as a commercial landlord with an inventory of returned space would do. Efforts to foist these duties onto CLECs shirk Verizon's collocation obligations. Until Verizon does so, it cannot be considered in compliance with this checklist item.

2. Verizon's Proposal to Withdraw its Federal Collocation Tariff Would Further Erect Barriers to Collocation for CLECs.

72. Recently, the Verizon Telephone Companies filed an Application to discontinue expanded interconnection service—physical collocation--pursuant to its FCC collocation tariffs. Verizon's proposal seeks to change critical rates, terms and conditions associated with these federally tariffed services without adequate FCC review.

73. Many carriers purchase collocation services from Verizon out of both the *federal* and *intrastate* collocation tariff. Verizon seeks to eliminate the existing terms and

[52] Verizon could easily utilize the mechanisms and media which it uses today to communicate information to the CLEC community in general, and to collocating CLECs in particular. For example, Verizon could use the CLEC Handbook or industry letters to communicate the availability of this discounted collocation space.

conditions for all but the "space-related charges and cross-connects" of its federal physical collocation tariffs, and to insulate those terms and conditions from the FCC's review. Thus, under Verizon's proposal, carriers that currently have federally tariffed physical collocation arrangements would no longer have access to federally tariffed physical collocation "supporting services" essential to those physical collocation arrangements. These support service are not ancillary; rather they are critical components, such as DC power.

74. This change creates a substantial administrative burden for CLECs. CLECs will be required to verify the movement of the billing from the federal to the state bill, including pro rations and overlapping billing cycles, and to do this for hundreds and hundreds of collocations regionwide, all at the same time. Furthermore, CLECs are still struggling to sort out the bill verification of the regional collocation settlement and this proposal threatens to undermine that effort. It is not clear how such a schizophrenic approach to collocation will work.

75. AT&T filed comments with the FCC on September 18, 2002 opposing Verizon's proposal. Within the last two weeks, the FCC issued an order denying Verizon an automatic grant of its petition to discontinue providing physical collocation under its federal tariff. Until the full impact of Verizon's proposal can be ascertained and examined, however, the Commission should not consider Verizon WV to be in compliance with checklist item 2.

E. Checklist Item 13: Verizon Is Not In Compliance with the FCC's *Intercarrier Compensation Order.*

76. In its *Intercarrier Compensation Order* issued in April 2001, the FCC established a rebuttable presumption that, for the future, all traffic above a 3:1 terminating to originating ratio is presumed to be ISP-bound traffic subject to an interim transitional compensation mechanism.[53] Under the *Intercarrier Compensation Order*, compensation for ISP-bound traffic will be capped at a minute-of-use rate that will gradually decline over a 36-month period.[54] The FCC is now considering whether "bill and keep" should be adopted as an appropriate permanent cost recovery mechanism.[55]

77. In Paragraph 331 of its Checklist Declaration, Verizon asserts without reservation that it has implemented the provisions of the FCC's *Intercarrier Compensation Order*. Yet, in the very next sentence Verizon significantly qualifies its assertion:

> Accordingly, to the extent that Verizon WV is exchanging Internet-bound traffic and traffic properly subject to reciprocal compensation under the Act, and is required by an interconnection agreement to pay reciprocal compensation on local traffic, Verizon WV will apply the presumption that traffic that exceeds a 3:1 ratio of terminating to originating is Internet-bound traffic.[56]

78. Verizon's obtuse language suggests that it is still not complying with its reciprocal compensation obligations. First, Verizon does not explain what it means by

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[53] *In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996 and Intercarrier Compensation for ISP Traffic,* CC Docket Nos. 96-98 and 99-68, Order on Remand and Report and Order (April 27, 2001) ("*Intercarrier Compensation Order*").

[54] *Intercarrier Compensation Order*, ¶ 77-79.

[55] *Intercarrier Compensation Order*, ¶ 6.

[56] *Id.*

traffic "properly subject to reciprocal compensation under the Act." Second, Verizon does not explain what it means when it states that it will apply the FCC-mandated ratio only if "required by an interconnection agreement to pay reciprocal compensation on local traffic." It appears that Verizon WV continues to pay zero compensation notwithstanding the clear language in the FCC's *Intercarrier Compensation Order*.[57]

79. Indeed, in a discovery response in a Delaware reciprocal compensation proceeding, Verizon DE asserted that because Verizon believes the Agreement between AT&T and Verizon DE does not require Verizon DE to pay reciprocal compensation for ISP traffic (a conclusion directly contrary to a Delaware Hearing Examiner's finding on October 24, 2002), AT&T does not have a right to any payment for such traffic, including payments at the FCC's interim rates.[58] This conclusion is wholly inconsistent with the FCC's *Intercarrier Compensation Order,* which did not limit the payment of reciprocal compensation as apparently now envisioned by Verizon. AT&T is concerned that Verizon may adopt the very same unreasonable position in West Virginia.

80. In sum, Verizon WV appears poised to be ignoring its new reciprocal compensation obligations under the FCC's *Intercarrier Compensation Order.* Until and unless Verizon reverses course and consistently complies with the orders of this Commission and the FCC regarding its obligation to pay reciprocal compensation in West Virginia it cannot be found to be in compliance with Checklist item 13.

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[57] Under the *Intercarrier Compensation Order all* traffic in excess of 3:1 is eligible for the compensation under the declining FCC Intercarrier compensation rate. All traffic up to the 3:1 ratio is considered pure local traffic (not ISP-bound) and is compensable at the Commission's reciprocal compensation rate.

[58] Response of Verizon DE to AT&T Set I, No. 27 (Docket 319-02) (Attachment 5).

81. This concludes our Declaration.

VERIZON WEST VIRGINIA

CASE NO. 02-0809-T-P

RESPONSE TO AT&T'S FIFTH SET OF DATA REQUESTS
August 29, 2002

5-4 Provide the following information separately for collocation provided under Verizon WV's FCC collocation tariff (FCC No. 1) and its intrastate collocation tariff:

a. The total number of collocation arrangements that Verizon WV has provisioned in West Virginia.

b. The collocation arrangements (identified by CLLI code or address) returned to Verizon WV in West Virginia.

c. The date each collocation arrangement was returned to Verizon WV by the initial collocator and the size (in square feet) of the arrangement.

d. Of the arrangements identified in (c) above, identify which of those arrangements Verizon WV provided a refund or credit to the initial collocator of the unamortized portion of the non-recurring charges as of July 31, 2002.

e. An estimate of the total unamortized portion of the non-recurring charges associated with collocations returned to Verizon WV but not yet credited or refunded to the initial collocator.

f. All documentation or information in possession of Verizon WV concerning the return of collocation space in West Virginia, relating to the number of arrangements, the footage of the arrangements and the non-recurring charge associated with the construction of the collocation arrangement.

g. The total number of collocation arrangements, space licenses, or similar arrangements for Verizon WV central offices, involving Verizon WV affiliates in West Virginia. Include arrangements related to placement of voicemail equipment, video and internet access equipment.

h. All documents related to the return or conversion of collocation arrangements from Verizon WV's formerly separate data affiliate, a.k.a. VADI, and the subsequent re-assignment of that collocation space, including re-assignment to Verizon WV itself.

Response:

Verizon WV objects to this discovery request to the extent that it is overbroad, unduly burdensome, and seeks information that is neither relevant to this proceeding nor reasonably calculated to lead to the discovery of admissible evidence. Verizon WV further objects to the discovery request to the extent that it seeks confidential and/or proprietary information. Verizon WV objects to providing confidential and/or proprietary information in response to the discovery requests unless and until a Stipulated Protective Order is agreed upon between the parties and entered in this case. Verizon WV also objects to the discovery requests to the extent that they require special studies and/or calls for competitively sensitive information regarding other CLECs operating in West Virginia. Notwithstanding these objections, and without waiving them, Verizon WV will provide data to the extent it is available.

a. Verizon West Virginia has provisioned 79 collocation arrangements through July 31, 2002.
b. See VZ Proprietary Attachment AT&T Set 5, No. 4b.
c. See VZ Proprietary Attachment AT&T Set 5, No. 4c.
d. See response to AT&T Set 5, No. 11.
e. Calculation of the requested estimate would require an extensive study as it depends on a number of factors including if and when another CLEC uses the vacated space, and the size of the new arrangement compared with the size of the vacated arrangement. Additionally, this estimate would be subject to constant change, as the factors used to estimate the requested information would continually change.
f. See responses to AT&T Set 5, Nos. 4b and 4c that provide the number of arrangements and the size of arrangements returned to Verizon. AT&T already has in its possession and is fully aware of the space it has returned to Verizon. Information concerning other CLECs, which are AT&T's competitors, is proprietary to those CLECs.
g. On January 1, 2002, the VADI was reintegrated within Verizon WV. Effective on this date, VADI no longer collocated with Verizon WV. Thus, the number of collocation arrangements involving Verizon affiliates is zero
h. VADI arrangements, which were all virtual collocation arrangements, were converted in place at the time VADI was reintegrated within Verizon WV.. Consequently, there was no re-assignment of space.

ATTACHMENT 2

(Contains information Verizon alleges to be proprietary)

ATTACHMENT 3
(Contains information Verizon alleges to be proprietary)

VERIZON WEST VIRGINIA

CASE NO. 02-0809-T-P

RESPONSE TO AT&T'S FIFTH SET OF DATA REQUESTS
August 29, 2002

5-9 How are subsequent collocators and potential subsequent collocators made aware of the existence and availability of vacated collocation space at a specific Verizon WV premises or central office?

Response:

Verizon WV objects to this discovery request to the extent that it is overbroad, unduly burdensome, and seeks information that is neither relevant to this proceeding nor reasonably calculated to lead to the discovery of admissible evidence. Verizon WV objects to providing confidential and/or proprietary information in response to the discovery requests unless and until a Stipulated Protective Order is agreed upon between the parties and entered in this case. Notwithstanding these objections, and without waiving them, Verizon WV will provide data to the extent it is available.

All Verizon WV Central Offices are available for collocation regardless of whether there is returned space. Verizon does not actively advertise the availability of returned space, nor is it under any statutory requirement to do so. Verizon meets its federal and state requirements regarding space availability via its collocation website that provides CLECs with information on the availability of collocation space in its central offices. The website identifies central offices where all remaining physical collocation space has been exhausted. Verizon WV updates the website with information on space limitations within 10 calendar days after determining that physical collocation space is not available in an office.

A "potential subsequent collocator" can be made aware of vacated collocation space in many ways. The vacating CLEC could call other CLEC's, send e-mails, or choose any number of methods by which they could identify the fact that they vacated collocation space.

RESPONSE OF VERIZON DELAWARE INC. TO SET I, INTERROGATORY NO. 27 OF AT&T COMMUNICATIONS OF DELAWARE, INC. AND TCG DELAWARE VALLEY, INC. DATED APRIL 30, 2002 SUBMITTED IN DOCKET 319-02 BEFORE THE DELAWARE PSC

ANSWERED BY: Verizon DE Legal
POSITION:

REQUEST:

Referring to the FCC's April 27, 2001 *Order on Remand*, (a) state whether it is Verizon DE's policy position that an interconnection agreement amendment is necessary to implement the order; (b) describe in detail the full basis for Verizon DE's position.

RESPONSE:

Because the Agreement between AT&T and Verizon DE does not require Verizon DE to pay reciprocal compensation for ISP traffic, AT&T has no right to any payments for such traffic, including payments at the FCC's interim rates. Assuming arguendo that AT&T had a contractual right to reciprocal compensation for ISP-bound traffic (which it does not), under the Agreement, the appropriate transition date to the FCC's interim rates is June 14, 2001.